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CARRIER'S DUTY TO COLLECT FULL APPLICABLE TARIFF RATE

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Probably the most inflexibly applied duty known to current law is the duty of a carrier to collect the full applicable tariff rate. As a result some apparently surprising decisions, which would be anachronisms to the common law, are commonly reached. However, analysis of the historical alternatives discloses that this inflexibility is generally necessary if discrimination between shippers is to be avoided.

With respect to motor carriers, the statutory basis for the duty to collect the full applicable tariff rate is found partially in section 316 of the Interstate Commerce Act,[1] which creates the duty not only to establish and observe just and reasonable rates but also to enforce such rates. More specifically, however, section 317 (b)[2] states:

> No common carrier by motor vehicle shall charge or demand or collect or receive a greater or less or different compensation for transportation or for any service in connection therewith between the points enumerated in such tariff than the rates, fares, and charges specified in the tariffs in effect at the time and no such carrier shall refund or remit in any manner or by any device, directly or indirectly, or through any agent or broker or otherwise, any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities for transportation in interstate or foreign commerce except such as are specified in its tariffs: *Provided,* That the provisions of sections 1 (7) and 22 of this title shall apply to common carriers by motor vehicles subject to this chapter.

A similar duty is imposed upon railroads[3] and the decisions construing that section are applicable to motor carriers.

The original authoritative statement concerning the extent of the duty of a common carrier to collect the applicable tariff is found in *Pittsburgh, Cincinnati, Chicago and St. Louis Railway Co. v. Fink*[4] in which the carrier had brought an action against a consignee to recover the difference between the charge required by tariff, and the amount originally paid by the consignee. The Court specifically held that neither prior agreement with the carrier nor estoppel would constitute a successful defense in an action based upon the statutory requirement of equal rates. The extent of this statutory duty is such that the carrier may successfully maintain an action to collect the tariff rate even in cases where the carrier has knowingly quoted an illegally low rate, and the shipper has innocently

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1 49 U.S.C. § 316 (1951).
2 49 U.S.C. § 317(b) (1951).
3 49 U.S.C. § 6(7) (1951).
4 250 U.S. 577 (1919).

relied on the quotation to its detriment.[5] In *Peters-Quigan Corp. v. Long Transp. Co.*,[6] the Interstate Commerce Commission stated:

> There is no legal basis for charging rates on the article other than that embraced in the classification description. Under sec. 217 (b) of the Act, the defendants are prohibited from demanding, collecting or receiving compensation at rates other than the rates contained in the tariffs on the article actually shipped. Neither misunderstandings nor agreements among shippers or receivers and carriers can affect these statutory provisions which obligate the carriers to collect, and the shippers or receivers to pay amounts no different than the applicable rates.

In effect duly filed tariffs bind both the carrier and the shipper with the force of law.[7]

In specific instances it has been held that a carrier is not barred from collecting the full applicable rates even though it has unintentionally and mistakenly failed to collect the proper amount,[8] or has made an honest mistake in classification after a thorough effort to determine the applicable tariff.[9] Similarly, no showing of hardship upon the shipper will excuse payment of the full rate.[10] The effect of these rules is summed up in the statement, "Equitable considerations may not serve to justify failure of a carrier to collect, or retention by a shipper of, any part of lawful tariff charges."[11]

In actions brought by a carrier to recover the amount of undercharges on a previous shipment, interest may be charged from the date that the amount became due. This has been approached as a matter of general common law which is a part of the federal right to collect the full amount of the applicable tariff.[12] The claim for undercharges has also been treated as one for a liquidated amount such that interest may be recovered under the Colorado statutes.[13]

In view of the fact that the duty to collect the full tariff charge is absolute and statutory, it necessarily follows that any settlement or compromise of the shippers liability is void on its face. Therefore, neither settlement nor accord and satisfaction will constitute a valid defense to an action by the carrier to recover an undercharge.[14] As a result litigation of even the smallest matters must be pursued.[15] For the same reasons it is not permissible for the shipper to withhold from his payment sums allegedly due in compensation for damage to the shipment. After payment of the tariff charges, complaint may *then* be filed by the consignee for damages as a result of delay or other act of the shipper.[16]

Another aspect of the rule requires strict compliance by the shipper with all tariff rules and regulations as well as payment in full. Thus in *Union Pacific R.R. Co. v. Corneli Seed Co.*[17] it was

5 Hughes Transp., Inc. v. United States, 121 F. Supp. 212 (1954).
6 64 M.C.C. 581.
7 Union Pacific R.R. Co. v. Corneli Seed Co., 161 F. Supp. 52 (S.D. Idaho 1958).
8 Cent. Warehouse Co. v. Chicago, R.I. & P. Ry. Co., 20 F.2d 828 (1927).
9 Peters-Quigan Corp. v. Long Transp. Co., 64 M.C.C. 581.
10 Railway Express Agency v. Atlantic & Pac. Wire & Cable Co., 172 N.Y.S.2d 749 (1958).
11 Baldwin v. Scott Milling Co., 307 U.S. 478 (1939).
12 T. & M. Transp. Co. v. S.W. Shattuck Chem. Co., 158 F.2d 909 (10th Cir. 1947).
13 *Ibid.*
14 Galveston, H. & S. A. Ry. Co. v. Lykes Bros., 294 Fed. 968 (D.C. Tex. 1923).
15 In United States v. Bethke, 132 F. Supp. 22 (D.C. Colo. 1955) the amount in controversy was $69.71.
16 *Supra*, note 10.
17 *Supra*, note 7.

held that a processor receiving seeds for processing and then reshipping them to their final destination was not entitled to the benefit of a transit or single factor rate upon ceasing to comply with the regulations governing that tariff. The rule required the outbound bill of lading to show the point of origin of the shipment. Even though former compliance with the rule had resulted in loss of business to competitors, it was observed that the shipper must comply with every pertinent provision of the tariff in order to secure the lower rates established therein.

Only two exceptions are known to exist to the rule that a carrier must collect the full amount of any undercharge which has occurred. The first exception to the rule exists where a carrier has transported goods under contract with the United States Government. In such cases, only the contract price may be recovered; for Section 22 of the act[18] provides that, "Nothing in this chapter shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States." This exception applies, however, only where the carriage was pursuant to an express agreement between the government and the carrier. Otherwise the applicable tariff applies and it becomes the carrier's duty to collect the full amount. Connecting carriers are apparently not bound by such contracts in the absence of some concurrence on their part, privity of contract, or at least conscious acquiescence.[19]

The only defense which may be asserted by a private shipper is the statute of limitations. The controlling statute in this respect

18 49 U.S.C. § 22 (1951).
19 United States v. Bethke, 132 F. Supp. 22 (D.C. Colo. 1955).

is section 16(3),[20] which provides, "All actions at law by carriers subject to this chapter for recovery of their charges, or any part thereof, shall be begun within two years from the time the cause of action accrues, and not thereafter." A state statute of limitations cannot apply to actions by an interstate carrier for recovery of undercharges.[21]

With respect to intra-state shipments within Colorado, similar results from those mentioned above are required.[22] The statute expressly prohibits the carrier from receiving different compensation from that filed in its schedule of tariffs. Both direct and indirect evasions of the rule are banned.

A somewhat unique attempt to avoid the effect of this statute was presented by a recent Colorado case.[23] This was an action to recover freight charges. Defendant was understandably disturbed because the carrier's agent had misstated the rate, resulting in an error of $482.04. Defendant had re-sold the goods carried in the belief that the low rate mis-quoted to him established his costs. Consequently a counter claim *in tort* was filed, based upon the alleged negligence of the agent. The Colorado court held that the rule requiring collection of the full applicable rate is not subject to evasion on the basis of an alleged tort claim. It is of interest that the court also emphasized the similarity between state and federal statutes in this matter.

It was not always thus. One might have expected special contracts to be prohibited by the provision in the Colorado Constitution proscribing "undue or unreasonable discrimination" or "preference in furnishing cars or motive power."[24] However, the legality of rebates was upheld in *Bayles v. Kansas Pacific Ry. Co.*[25] where a shipper brought suit to recover the balance of a rebate due under a special contract with the defendant at lower than the published rates. Judgement on demurrer for the defendant was reversed. It was held that railway companies may discriminate so long as such discrimination is neither unjust nor unreasonable. In the absence of a showing that such rates and privileges would not be extended to others similarly situated the special contract was fully enforceable. In a subsequent appeal of the same case[26] the court re-affirmed the stand previously taken, pointing out that neither the common law nor the Colorado Constitution prohibited contracts to transport persons or freight at less than scheduled rates. In that opinion the court stated: "It is contended that unreasonable discrimination can best be prevented by declaring all contracts for rebates void; but this rule has the disadvantage of allowing a common carrier to profit by its own iniquity."

Obviously it would be virtually impossible to prove that a carrier would not offer similar rates to other shippers similarly situated. Hence, the former rule offered no protection to the shipper against discrimination. Cast in this background the rigidity of the present rule that the carrier must collect the full applicable tariff rate becomes excusable.

20 49 U.S.C. § 16(3) (1951).
21 Strawberry Growers Selling Co. v. American Ry. Express Co., 31 F.2d 947 (5th Cir. 1929).
22 Colo. Rev. Stat. § 115-3-5 (1953).
23 Denver & Rio Grande Western R.R. Co. v. Marty, 12 Colo. Bar Ass'n Adv. Sh. 615 (1960).
24 Colo. Const. art. XV, § 6. The provision applies only to railroads.
25 13 Colo. 181, 22 Pac. 341 (1889).
26 Kansas Pac. Ry. Co. v. Bayles, 19 Colo. 348, 35 Pac. 744 (1894).